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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JAVIER SOLIS,

Defendant and Appellant.

B218422

(Los Angeles County
Super. Ct. No. TA106846)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Paul A. Bacigalupo, Judge. Affirmed.

Jeffrey S. Kross, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Lance E. Winters and Susan D. Martynec, Deputy Attorneys General, for Plaintiff and Respondent.

Javier Solis appeals from the judgment entered following his no contest plea to one count of carrying a concealed firearm. (Pen. Code, § 12025, subd. (a)(2).) Appellant contends that the trial court erred in denying his motion to suppress evidence. (Pen. Code, § 1538.5.) We affirm.

FACTUAL AND PROCEDURAL SUMMARY

On June 1, 2009, around midnight, Deputy Alberto Hernandez was on patrol with his partner, Deputy Sergio Jimenez, in a marked police car in the City of Compton. Deputy Hernandez saw appellant standing inside a gated area in front of an apartment complex, looking around, from right to left, front to back, and toward some of the apartment windows. Appellant appeared to be sweating, even though it was a relatively cool night. Deputy Hernandez thought that appellant might have been preparing to burglarize one of the apartments, so the deputies stopped their car.

When the deputies stopped their car, appellant looked at them, appeared startled, exited the gated area of the apartment complex, and began to walk down the street. When Deputy Hernandez called out, “Hey, come here,” appellant stopped, raised his hands, and said that he was coming from a party.

The fact that appellant immediately raised his hands caused Deputy Hernandez to believe that appellant might be armed. In Hernandez’s experience, it was unusual for a person to raise his hands without being asked unless he was armed and sought to ensure that if police saw his weapon, they would not perceive it as a threat. As Deputy Hernandez and his partner got out of the car, they asked appellant if he possessed any contraband, and appellant replied that he had a gun in his waistband. The deputies retrieved a revolver from appellant’s waistband.

Appellant was charged by information with one count of possession of a firearm by a felon (Pen. Code, § 12021, subd. (a)(1)) and carrying a concealed firearm on the person (Pen. Code, § 12025, subd. (a)(2)). Appellant filed a motion to suppress evidence pursuant to Penal Code section 1538.5, arguing that the detention was not supported by reasonable suspicion, the detention was illegally prolonged, and the search was not

justified by probable cause.

The trial court denied appellant's motion to suppress evidence. The court found that Deputy Hernandez's testimony was credible and that "he had a legitimate and lawful basis to conduct an investigation. His observations of the defendant caused him to investigat[e] whether the defendant was about to commit a crime; his observations and beliefs that when the defendant immediately raised his arms, he believed the defendant may have been in possession of contraband or carrying a weapon, and his inquiry was legitimate; and, therefore the defendant's statement that he had a gun and the confiscation of the gun shall not be suppressed."

Following the trial court's denial of the motion, appellant decided to change his plea. After being informed of and waiving his rights, appellant entered a plea of no contest to count two, carrying a concealed firearm.¹ The court placed appellant on 36 months of formal probation, under the condition that he serve 270 days in county jail. Appellant received credit for 73 actual custody days and 36 good time/work time credit days, for a total of 109 days, and was ordered to follow numerous terms and conditions. Appellant filed a notice of appeal challenging the denial of the motion to suppress.

DISCUSSION

Appellant contends that the deputies lacked reasonable suspicion to detain him and that all the evidence flowing from the detention accordingly should have been suppressed. We disagree and therefore affirm.

"The standard to review the denial of a suppression motion is well settled. We must defer to the trial court on all its factual findings if they are supported by substantial evidence. Once the facts are determined, we then decide de novo whether the search or seizure was reasonable under established constitutional principles. [Citation.]" (*People v. Logsdon* (2008) 164 Cal.App.4th 741, 744.)

¹

The other count was dismissed.

There is no question that “a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest.” (*Terry v. Ohio* (1968) 392 U.S. 1, 22.) “[A] ‘detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity.’ [Citation.]” (*People v. Logsdon, supra*, 164 Cal.App.4th at p. 744.)

“As our high court has reiterated, ‘we have said repeatedly that they [reviewing courts] must look at the “totality of the circumstances” of each case to see whether the detaining officer has a “particularized and objective basis” for suspecting legal wrongdoing. [Citation.] This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that “might well elude an untrained person.” [Citations.] Although an officer’s reliance on a mere “hunch” is insufficient to justify a stop [citation], the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard. [Citation.]’ [Citation.]” (*People v. Osborne* (2009) 175 Cal.App.4th 1052, 1058.)

Here, Deputy Hernandez saw appellant standing outside an apartment complex around midnight, looking around, causing Deputy Hernandez to suspect appellant was preparing to burglarize an apartment. When the deputies stopped their car, appellant left the apartment complex and began walking down the street. Under the totality of the circumstances, it was reasonable for the deputies to detain appellant in order “to resolve the ambiguity in the situation and to find out whether the activity was in fact legal or illegal. [Citation.]” (*People v. Souza* (1994) 9 Cal.4th 224, 242.)

When Deputy Hernandez called out to appellant, appellant raised his arms in a manner suggesting to Deputy Hernandez that he was armed. ““When an officer is

justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others,' the officer may conduct a limited patsearch 'to determine whether the person is in fact carrying a weapon.' [Citation.]" (*People v. Osborne, supra*, 175 Cal.App.4th at p. 1059.) Rather than conducting a patsearch, Deputy Hernandez asked appellant if he was carrying any contraband because he was concerned that appellant was armed. The deputies' actions were reasonable given the totality of the circumstances.

The trial court did not err in denying appellant's motion to suppress.

DISPOSITION

The judgment is affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.